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GOVERNMENT GAZETTE

BOLETIM OFICIAL

SUPPLEMENT

(No. 2)

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Law Department

No. 2445/64

The following Act passed by the Legislative Assembly of Goa, Daman and Diu received the assent of the President of India on the 24th December, 1964 and is hereby published for general information.

The Goa, Daman and Diu Administration of Evacuee Property Act, 1964

(No. 6 of 1964) [24th December, 1964]

An Act to provide for the administration of evacuee property in the Union territory of Goa, Daman and Diu and for certain matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. Short title, extent and commencement. — (1) This Act may be called the Goa, Daman and Diu Administration of Evacuee Property Act, 1964.

(2) It extends to the whole of the Union Territory of Goa, Daman and Diu.

(3) It shall come into force at once.

2. Definitions. — In this Act unless the context otherwise requires, —

(a) «Custodian» means the Custodian appointed or deemed to be appointed under section 4, and includes any Deputy or Assistant Custodian of evacuee property;

(b) «evacuee» means any person who is not an Indian citizen and —

- (i) who, on account of liberation of Goa, Daman and Diu, leaves or has, on or after the relevant date, left Goa, Daman and Diu for any place outside India; or
- (ii) who has after the relevant date transferred to any place outside India, without the previous approval of the Custodian, his assets or any part of his assets situated in Goa, Daman and Diu; or
- (iii) who, during any time before or after the relevant date, has been residing in any place outside India, and who for that reason was or is unable to occupy, supervise or manage in person his property in Goa, Daman and Diu, or whose property has ceased to be occupied, supervised or managed by any person, or is being occupied, supervised or managed by an unauthorised person:

Provided that, unless the Government, for good and sufficient reasons, directs otherwise, no person of Goa, Daman and Diu origin, shall become an evacuee by virtue of sub-clause (iii), if he had, before the relevant date, migrated to any country outside India and by reason of such migration became a national or domicile of that country.

Explanation I: For the purposes of this Act, a person shall be deemed to be of Goa, Daman and Diu origin if he or either of his parents or grand parents was born anywhere in India including Goa, Daman and Diu.

Explanation II: «migration» means the departure out of India of any person for the purpose of any employment or with the intention of engaging in any gainful occupation.

(c) «evacuee property» means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any other capacity), and includes any property, —

- (i) which has been obtained by any person from an evacuee after the relevant date, by any mode of transfer unless such transfer has been confirmed by the Custodian; or
- (ii) which belongs to an intending evacuee and in respect of which a declaration is made under section 21.

(d) «Goa, Daman and Diu» means the Union Territory of Goa, Daman and Diu;

(e) «Government» means the Government of Goa, Daman and Diu;

(f) «intending evacuee» means any Portuguese national in Goa, Daman and Diu against whom any intention to settle in any place outside India is established from his conduct or from documentary evidence and who is declared as an intending evacuee under section 18;

(g) «member of the family» of any person means any member of that family who is wholly dependent upon the earning of such person for the provision of the ordinary necessities of life or who shares with such person in the ordinary expenses of the household to which they jointly belong or who owns property or carries on business jointly with such person;

(h) «Official Gazette» means the Goa, Daman and Diu Government Gazette;

(i) «prescribed» means prescribed by rules made under this Act;

(j) «property» means property of any kind and includes any right or interest in such property;

(k) «relevant date» means the sixth day of December, 1961:

Provided that Government by notification in the Official Gazette fix the 15th day of August, 1954, as the relevant date for any particular class or category of cases;

(l) «unauthorised person» means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the relevant date, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

3. Act to over-ride other laws. — The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

Evacuee Property and vesting thereof in the Custodian

4. Appointment of Custodian, etc. — (1) The Government may, by notification in the Official Gazette, appoint a Custodian and as many Deputy or Assistant Custodians of evacuee property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Act and may, by general or special order, provide for the distribution of work among them:

Provided that the Custodian shall be a person qualified in law and having such legal experience as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1) any person who was exercising the powers of or functioning as a Custodian of property left behind by Portuguese nationals in Goa, Daman and Diu, by virtue of Proclamation no. XII dated 22nd January, 1962, issued by the Military Governor thereof, shall be deemed to be a Custodian appointed under this Act until a Custodian is appointed under this Act.

5. Declaration as evacuee property. — (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given, in such manner as may be prescribed, to the persons interested, and after holding such inquiry into the matter as the circumstances of the case may permit, pass an order declaring any such property to be evacuee property.

(2) Where, during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property, any person interested in the property dies, the proceeding shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.

(3) Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(4) The Custodian shall, notify by publication in the Official Gazette and in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1), within a period of thirty days from the date of the declaration.

6. Vesting of evacuee property in the Custodian. — (1) Any property declared to be evacuee property under section 5 shall be deemed to have vested in the Custodian —

(a) in the case of property of an evacuee as defined in sub-clause (i) of clause (c) of section 2, from the date on which he leaves or has left any place in Goa, Daman and Diu for any place outside India;

(b) in the case of property of an evacuee as defined in sub-clause (ii) of clause (c) of section 2, from the date of the notice given under sub-section (1) of section 5 in respect thereof; and

(c) in the case of property as defined in sub-clause (iii) of clause (c) of section 2, from the relevant date.

(2) Where immediately before the commencement of this Act any property in Goa, Daman and Diu had vested as evacuee property in any person exercising the powers of Custodian under any law or order repealed hereby, the property shall, on the commencement of this Act be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed under this Act and shall continue to so vest.

(3) Where after any evacuee property has vested in the Custodian any person, including an officer of Government, is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

7. Power of Custodian to take possession of evacuee property vested in him.— (1) If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may for this purpose, after giving reasonable warning (and reasonable facility to any woman who by custom or usage will not appear in public, to withdraw), remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

(2) Where it becomes necessary to use force, the Custodian may, with the approval of Government requisition the aid of the Police and in such cases, every officer of the Police shall be bound to render such assistance as may be required by the Custodian.

8. Powers and duties of the Custodian generally.— (1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may, for any of the purposes aforesaid,—

(a) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;

(b) enter, or authorise any other person to enter any land or premises to inspect any evacuee property;

(c) take all such measures as may be necessary to keep any evacuee property in good repair;

(d) complete any building which has vested in him and which requires to be completed;

(e) require any person, notwithstanding anything to the contrary contained in any other law for the time being in force relating to the disclosure of any information by a public servant or any other person, to furnish such returns, accounts or other information in relation to any property and to produce such documents in his possession as the Custodian con-

siders necessary for the discharge of his duties under this Act;

(f) require any banking company to furnish such information as the Custodian may require with respect to remittances made after the relevant date to any such area outside India as may be specified by the Custodian, either generally, or with reference to any person or class of persons;

(g) take such action as may be necessary for the recovery of any debt due to the evacuee;

(h) institute, defend or continue any legal proceeding in any civil or revenue court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

(i) incur any expenditure, including expenditure on the payment of taxes, duties, cesses and rates to Government or to any local authority or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person;

(j) pay to the evacuee, or to any member of his family or to such other person as in the opinion of the Custodian is entitled thereto, any sum of money out of the funds in his possession;

(k) transfer in any manner whatsoever any evacuee property notwithstanding anything to the contrary contained in any law or agreement relating thereto:

Provided that the Custodian shall not so transfer any immovable property or any business or other undertaking of the evacuee except with the previous approval of Government.

Provided further that, unless otherwise directed by the Government, all sales of property shall be by public auction.

(l) acquire any non-evacuee interest in evacuee property, whether by way of purchase or otherwise;

(m) delegate, by general or special order, all or any of his functions under this Act to such officers or persons as may be prescribed.

Provided that the Custodian shall not delegate any of his functions under clause (f) or clause (g) to any officer or person below the rank of an Assistant Custodian.

9. Power to recover rent or damages in respect of evacuee property vested in the Custodian.— (1) Where any person is in arrears of rent in respect of any evacuee property vested in the Custodian, the Custodian may, by order, require that person to pay the same within such time and in such instalments, if any, as may be specified in the order.

(2) Where any person is deemed to be holding any evacuee property on behalf of the Custodian under sub-section (3) of section 6, the Custodian may, having regard to such principles of assessment of rent as may be prescribed, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed.

(3) Where any person is, or has at any time been, in unauthorised possession of any evacuee property vested in the Custodian, the Custodian may, having regard to such principles of assessment of damages as may be prescribed assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(4) Where any person being in possession of any evacuee property vested in the Custodian has caused damage to any such property, the Custodian may assess the compensation payable on account of the damage so caused and may, by order, require that person to pay the compensation within such time and in such instalments as may be specified in the order.

(5) No order shall be made under sub-section (2) or sub-section (3) or sub-section (4), until after the issue of a notice in writing to the person concerned calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Custodian.

10. Custodian's right in respect of leases, allotments or possession of evacuee property.— (1) Notwithstanding anything contained in any other law for the time being in force or in any agreement or contract, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person (whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act):

Provided that in the case of any lease granted before the relevant date the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him; or

(c) has failed to pay rent in accordance with the terms of the lease.

(2) Where the title or the right to possession of any evacuee property, as a tenant or otherwise, was on the relevant date the subject matter of any dispute, the right to possession shall be deemed to have vested in the Custodian as from the said date, notwithstanding anything contained in any other law for the time being in force or in any agreement or contract; and the person holding possession shall cease to be entitled to possession.

(3) Where by reason of any action taken under sub-section (1) or sub-section (2), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(4) If any person fails to surrender possession of any property on demand under sub-section (3), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in section 7.

11. Special provisions with respect to transfer of tenancy rights of evacuees.— (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as eva-

cuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or lease granted by him.

(2) On the making of any such declaration as is referred to in sub-section (1) —

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(b) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(3) Nothing contained in this section shall —

(a) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest —

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(ii) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease.

(b) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2); or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian.

12. Payments to Custodian to be valid discharge.—

(1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person.

13. Recouping of expenditure by Custodian.—Any expenditure incurred by the Custodian in the exercise of any power conferred by or under this Act shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall, subject to the provisions of section 42, have priority over all other charges on the property, and such expenditure may be met or

recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

14. Maintenance of accounts by Custodian.— (1) The Custodian shall maintain a separate account of the property of each evacuee possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The accounts shall be maintained in such form and in such manner as may be prescribed.

(3) The Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such person as may be prescribed.

15. Restoration of evacuee property.— (1) Subject to such rules as may be made in this behalf, any evacuee or any person claiming to be an heir of an evacuee may apply to Government or to any person authorised by it in this behalf (hereinafter in this section referred to as the authorized person) that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, may be restored to him.

(2) On receipt of an application under sub-section (1) Government or the authorized person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an inquiry into the claim to be held in such manner as may be prescribed, shall—

(a) if satisfied—

- (i) that the conditions prescribed by rules made in this behalf have been satisfied,
- (ii) that the evacuee property is the property of the applicant, and
- (iii) that it is just or proper that the evacuee property should be restored to him,

make an order restoring the property to the applicant, or

(b) if not so satisfied, reject the application:

Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the applicant to establish his title to the property in a Civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a Civil Court for the determination of his title:

Provided that no order for the restoration of any evacuee property shall be made under this sub-section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property, so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.

(4) The Custodian shall, on demand furnish to the evacuee or to the heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property, and such other particulars as may be required by him and as the circumstances may permit.

(5) Where the property had been sold by the Custodian or acquired by Government under any law, the provisions in the foregoing sub-sections shall apply to the net sale proceeds or, as the case may be, the net compensation hereof.

CHAPTER III

Certain Consequences of Property Vesting in Custodian

16. Exemption of evacuee property from process of Court, etc.— Save as otherwise expressly provided in this Act, no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of this Act, shall cease to have effect on such commencement and shall be deemed to be void.

17. Occupancy or tenancy rights not to be extinguished.— (1) Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any Court, shall extinguish or be deemed to have extinguished any such rights, either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter, so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—

(a) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(b) the Custodian.

CHAPTER IV

Property of intending evacuees

18. Declaration of a person as intending evacuee.— (1) Where the Custodian has reason to believe that a person is an intending evacuee, he may, by notice

served in the prescribed manner, call upon such person to show cause why he should not be declared an intending evacuee, and shall, after holding such inquiry into the matter as the circumstances thereof permit, and after taking such evidence as may be produced by or on behalf of the person showing cause, pass an order (stating the reasons therefor) either declaring such person to be an intending evacuee or closing the case.

(2) Any declaration made under sub-section (1) shall be published in the Official Gazette.

(3) The Custodian may, pending determination of the question whether any person is an intending evacuee or otherwise, attach in the prescribed manner any property in Goa, Daman and Diu in which such person has a right or interest, and during the pendency of such attachment, the property shall be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

19. Consequences of declaration that a person is an intending evacuee.—No person, in respect of whom a declaration has been made under section 18 that he is an intending evacuee, shall transfer in any manner whatsoever any property in which he has any right or interest, situated in any part of Goa, Daman and Diu, except with the previous approval of the Custodian, and any transfer made in contravention of the provisions of this section shall be void and of no effect.

20. Powers of Custodian generally in respect of property of intending evacuees.—For the purpose of preserving any property in which any person, in respect of whom a declaration has been made under section 18 that he is an intending evacuee, has any right or interest, the Custodian may,—

(a) by order in writing, require any such person to furnish such returns, accounts or other information in relation to any such property and to produce such documents in his possession as the Custodian may require;

(b) inspect the books of account or other documents maintained by or in the possession of such person;

(c) pass such orders or direct such action to be taken in relation to any such property as may be considered by him to be necessary;

(d) by order in writing, prohibit the transfer of any sum of money belonging to any such person or permit such transfer subject to such conditions and restrictions as the Custodian may think fit to impose.

21. Declaration of property of intending evacuee as evacuee property in certain cases.—If the Custodian is satisfied that any person in respect of whom a declaration has been made under section 18 that he is an intending evacuee, has made a transfer of any property in contravention of section 19, or has failed to comply with any order made under clause (c) or clause (d) of section 20, the Custodian may by notification in the Official Gazette declare the property in which such person has any right or interest to be evacuee property, and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Act.

CHAPTER V

Appeals

22. Appeals.—Any person aggrieved by an order made under section 5, section 18, section 31 or section 39 by the Custodian may prefer an appeal in such manner and within such time as may be prescribed to Government or to such authority or tribunal as may be prescribed and the decision of the Government or the authority or the tribunal, as the case may be, shall be final.

CHAPTER VI

Penalties and Procedure

23. Penalty for failure to surrender possession of evacuee property.—Any person who fails to comply with a notice or demand by or on behalf of the Custodian under the provisions of this Act to surrender possession of any evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

24. Penalty for wrongfully paying or receiving rents, etc.—Any person who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both:

Provided that nothing contained in this section shall apply to or render punishable any payment made to or received by the Custodian.

25. Penalty for concealing evacuee property.—Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

26. Penalty for causing damage to evacuee property.—Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

27. Penalty for false declaration in certain cases. Any person who—

- (i) for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false, or does not believe to be true, or
- (ii) furnishes any return, account or information which is material to any of the purposes of this Act and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

28. Penalty for offences not expressly provided for.—Any person who contravenes any provision of this Act or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred

by or under this Act or makes default in complying with any requirement of this Act or of any rule or order made thereunder, shall, if no express provision is made by this Act for punishment of such contravention, obstruction or default, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

29. Penalty for offences committed by companies. — If the person charged with an offence under this Act is a company or other body corporate, the director, manager, secretary or other officer of the company or other body corporate directly concerned in the management thereof shall, unless he proves that the offence took place without his knowledge or that he exercised due diligence to prevent such contravention, be deemed to be guilty of such contravention.

30. Penalty for abetment. — Any person who abets any of the offences punishable under this Act shall be punishable with the punishment provided for the offence.

CHAPTER VII

Miscellaneous

31. Validity of transfers respecting property subsequently declared to be evacuee property. — (1) No transfer made after the relevant date by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(2) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later.

(3) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

32. Transactions relating to evacuee property void in certain circumstances. — (1) As from the commencement of this Act, no transfer of or transaction in respect of any property belonging to a Portuguese national shall be valid unless it is made with the previous approval of the Custodian.

(2) Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be

declared to be evacuee property within the meaning of this Act shall be void unless entered into by or with the previous approval of the Custodian.

33. Submission of information to Custodian in respect of evacuee property. — As soon as may be but not later than sixty days from the commencement of this Act every person who is occupying, supervising or managing any property without the approval of the Custodian which he knows or has reason to believe to be evacuee property, shall submit to the Custodian or to any person authorised by him in this behalf, full information relating to such property, including the date from which or the period during which he has been occupying, supervising or managing it, and a detailed account of the rents, profits, income or other benefits received from the said property from the date from which or for the period during which he has been occupying, supervising or managing it.

34. Vesting of property in Custodian not affected by the death of evacuee, etc. — Where in pursuance of the provisions of this Act any property has vested in the Custodian, neither the death of the evacuee at any time thereafter nor the fact that the evacuee who had a right or interest in that property had ceased to be an evacuee at any material time shall affect the vesting or render invalid anything done in consequence thereof.

35. Certain officers to be public servants. — The Custodian and every other person duly appointed to discharge any duties imposed on them by this Act or the rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

36. Powers of the Custodian while holding enquiry. — For the purpose of holding any enquiry under this Act, the Custodian shall have the same powers as are vested in a civil Court under the law for the time being in force, when trying a suit, in respect of the following matters, namely—

a) enforcing the attendance of any person and examining him on oath;

b) compelling the discovery and production of document;

c) any prescribed matter; and the enquiry by the Custodian shall be deemed to be a Judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

37. Jurisdiction of Civil Courts barred in certain cases. — Save as otherwise expressly provided in this Act no Civil or Revenue Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) to question the legality of any action taken by Government or the Custodian under this Act; or

(c) in respect of any matter which Government or the Custodian is empowered by or under this Act to determine.

38. Protection of action taken in good faith. — (1) No suit, prosecution or other legal proceeding shall lie against the Custodian or any person acting under the direction of the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government, Government or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

39. Recovery of certain sums due. — (1) Any sum payable to Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise, howsoever, may be recovered in the same manner as any other sum due to Government.

(2) If any question arises whether a sum is payable to Government or to the Custodian within the meaning of sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal under this Act, be final and shall not be called in question by any Court or other authority.

(3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by any law for the time being in force relating to limitation of actions.

40. Record to be public documents. — All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and shall be presumed to be genuine until the contrary is proved.

41. Notice of suits to the Custodian. — If in any suit it appears to the Civil or Revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

42. Fees payable to the Custodian. — (1) The Government may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property, shall be a first charge on the property and shall be credited and accounted for in such manner as may be prescribed.

43. Power of Central Government to give directions. — The Central Government may give directions to

Government for the purpose of carrying into execution any of the provisions contained in this Act or of any rules or orders made thereunder.

44. Power of Government to take action with regard to evacuee property. — Government may, for the purpose of regulating or improving the administration of any property which has vested in the Custodian under the provisions of this Act, pass such order or direct such action to be taken in relation thereto, as in his opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act.

45. Power to exempt. — (i) Notwithstanding anything contained in this Act, the Government may, if satisfied as to the genuineness of a case for exemption in respect of any person or class of persons, order that the provisions of this Act shall not apply to him or to such class of persons, as the case may be, or to the property concerned, or shall apply with such modifications as may be specified in the order.

(ii) Every such order shall be published in the Official Gazette.

46. Power to make rules. — (1) Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the manner in which inquiries under this Act may be held;

(b) the manner in which evacuee properties which have vested in the Custodian may be notified;

(c) the manner in which possession of any evacuee property may be taken by the Custodian;

(d) the manner in which any person claiming any right to, or interest in, any property which has been notified as evacuee property may have his claim registered and disposed of;

(e) the manner in which any attachment may be made by the Custodian;

(f) the circumstances in which, and the conditions subject to which, the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;

(g) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;

(h) the manner in which rent of any property or damage for unauthorised possession of any property may be assessed, and the principles which may be taken into account in assessing such rent or damages;

(i) the manner in which any moneys due to the Custodian may be recovered;

(j) the form and manner in which books of accounts and other records shall be maintained by the Custodian;

(k) the form in which any notice under this Act may be issued, the manner of its service and publication and the form in which any demand may be made by the Custodian;

(l) the nature of cases and the circumstances in which and the conditions subject to which property may be restored under section 16;

(m) the powers vested in a Civil Court which may be exercised by the Custodian while holding any inquiry under this Act;

(n) the manner in which applications for the previous approval of the Custodian may be made under section 31 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section;

(o) the form and manner in which and the time within which appeals may be preferred and the fees payable in respect thereof;

(p) the terms and conditions of service of the Custodian and other officers appointed under this Act and for the furnishing of security by them;

(q) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid, credited or accounted for;

(r) the persons by whom and the time at which books of accounts maintained under this Act may be inspected and audited;

(s) any other matter which has to be or may be prescribed under this Act.

47. **Repeal and Savings.** — (1) The Proclamation No. XII dated 22nd January, 1962 issued by the Military Governor of Goa, Daman and Diu is hereby repealed.

(2) The repeal by this Act of the aforesaid Proclamation shall not affect the previous operation of that Proclamation and anything done or any action taken in the exercise of any power conferred by or under that Proclamation shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

Secretariat
Panjim
December 31, 1964

S. BALAKRISHNAN
Secretary to the Government
of Goa, Daman and Diu